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No. 84-1411

IN THE
Supreme Court of the United States

October Term, 1984

ARKANSAS-BEST FREIGHT SYSTEM, INC.,
Petitioner,

v.

LLOYD BARRENTINE, *et. al.*,
Respondents.

MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Petitioner contends that the court of appeals erred in affirming the district court's ruling that respondents, who are truck drivers employed by petitioner, are entitled to compensation under the Fair Labor Standards Act ("FLSA") for the time that they spend conducting pre-trip safety inspections of their vehicles. As demonstrated below, none of petitioner's claims are well-founded, and the court of appeals' decision does not conflict with any prior decision of this Court.[1]

[1]The facts of this case are adequately set forth in the decision of this Court in *Barrentine v. Arkansas-Best Freight System,* 450 U.S. 728 (1981), and in the two reported decisions by the court of appeals, 615 F.2d 1194 (8th Cir. 1980) and 750 F.2d 47 (8th Cir. 1984).

1. Petitioner first contends that the court of appeals' ruling conflicts with *Tennessee Coal Iron & Railroad Co. v. Muscoda Local No. 123,* 321 U.S. 590 (1943), which held that, to constitute compensable time under the FLSA, an employer must both exercise control over the activity and derive substantial benefit from it. Petitioner asserts that it exercises no control over respondents' safety inspections of their vehicles because the inspections are required by federal regulations. *See* 49 C.F.R. §§ 392 and 396. However, petitioner neglects to mention that the safety inspection requirements are part of a comprehensive regulatory scheme establishing truck maintenance requirements for carriers such as petitioner, and that the regulations impose a duty on the carrier to rigorously supervise its drivers. Failure to comply with these requirements, including that of assuring that drivers such as respondents carry out the necessary inspections, can result in criminal sanctions against the carrier. 49 U.S.C. § 11909 (1981 Supp.). Thus, petitioner's argument that it does not have to pay respondents for the inspection time because it has no control over their conduct was properly rejected.

Nor is there merit to petitioner's argument that the safety inspections do not benefit petitioner at all, and for that reason are not compensable under *Tennessee Coal.* As both the court of appeals and district court expressly found, petitioner derives substantial "benefit from the safety inspection and repair of defects," *see* Pet. App. at 34, 750 F.2d at 50, and hence the inspection time is plainly compensable under the Fair Labor Standards Act. *See Steiner v. Mitchell,* 350 U.S. 247, 252 (1956).[2]

[2]Petitioner's reliance on the OSHA walk-around cases, *Leone v. Mobil Oil Co.,* 523 F.2d 1153 (D.C. Cir. 1975) and *Chamber of Commerce v. OSHA,* 636 F.2d 464 (D.C. Cir. 1980), is misplaced. Unlike

2. Petitioner next argues that the Portal-to-Portal Act's exemptions from the FLSA's mandatory compensation provisions for activities which are "preliminary" to an employee's principal activity are applicable. Here again, the courts below properly reached the opposite conclusion, finding that the safety inspections "are such an integral part of and so indispensable to [the drivers'] principal activity as to be outside the Portal-to-Portal Act exemptions." *See* 750 F.2d at 50-51; *see also* Pet. App. 34. This conclusion is fully consistent with prior court of appeals decisions, which have held that similar activities by truck drivers, such as servicing their vehicles before taking them out on the road, are not subject to the Portal-to-Portal Act exclusions. *See, e.g., Dunlop v. City Electric Inc.*, 527 F.2d 394 (5th Cir. 1976); *Mitchell v. Mitchell Truck Lines, Inc.*, 286 F.2d 721 (5th Cir. 1961).

3. Lastly, petitioner contends that the fact that respondents earn in excess of the weekly minimum wage acts as a bar to their receiving payment for the time spent conducting their pre-trip safety inspections. In making this argument, petitioner cites no cases nor any provision of the Fair Labor Standards Act. Nor does petitioner acknowledge that this argument was raised and rejected during the initial trial in this proceeding (Tr. 255-56), and only

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the inspections here, OSHA inspections are conducted by OSHA personnel — not employees — and thus the benefits to the workplace stem from the efforts and expertise of the OSHA inspector, not that of the employees who may choose to accompany him. Moreover, accompanying an OSHA inspector on walk-through of the plant is obviously far removed from the principal activity of most industrial workers. Thus, as the lower courts found, the critical differences between the employees' role in the inspections undermines petitioner's reliance on this line of cases.

recently resurrected by petitioner. In any event, this argument was properly rejected because one of the primary goals of the FLSA is to ensure that all covered employes are paid for *all* hours worked. *See, e.g., Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946). Nothing petitioner has said suggests any reason why this Court should carve out a new broad exception to the Act simply because respondents earn more per week than the statutory minimum.

* * *

As is clear, this case presents no questions meriting plenary review by this Court. The decisions of the courts below are consistent with the relevant statutory provisions and the case law. Moreover, while the issues presented are plainly of the utmost concern to the parties, petitioner has not even suggested that the issues are of substantial general importance or will have an effect on other litigants.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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